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OVERVIEW OF THE GRAND JURY PROCESS & AZ SENTENCING SCHEME

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GENERAL CRIMES FELONY SENTENCING RANGES

NON-DANGEROUS, NON-REPETITIVE OFFENSES (§13-702)						
Class	First Offense—(§13-702(D))					§ 13-902
	MIT	MIN	P	MAX*	AGG*	Max Probation
2	3	4	5	10	12.5	7 years
3	2	2.5	3.5	7	8.75	5 years
4	1	1.5	2.5	3	3.75	4 years
5	.5	.75	1.5	2	2.5	3 years
6	.33	.5	1	1.5	2	3 years

 Probation eligible, except for single drug manufacture, or drug sales > threshold §13-3405, 13-3407 or §13-3408.

* Statutory aggravator to go above presumptive, 2+ aggravating factors to go over max. A.R.S. §13-702

Lifetime Probation: For committing or attempting to commit: Ch 14 (sex) or Ch 35.1 (sex ex), §13-2308.01 (terrorism), §13-2923 (stalking), §13-3623 (child abuse) or §13-3824(A) (fail to reg), **term shall be max allowed for that class → up to LIFE.**

DUI: the term of probation for an aggravated DUI offense pursuant to §28-1383 is up to ten years.

AGG DV: § 13-3601.02 min. 4 months jail, if 3+ prior DV in 84 mo, must serve 8+ months jail. §13-3601(L) + 2 yrs if pregnant DV victim.

NON-DANGEROUS, REPETITIVE OFFENSES (§13-703)															
Class	Category One (§13-703(H))					Category Two (§13-703(I))					Category Three (§13-703(J))				
	MIT	MIN	P	MAX*	AGG*	MIT	MIN	P	MAX*	AGG*	MIT	MIN	P	MAX*	AGG*
2	3	4	5	10	12.5	4.5	6	9.25	18.5	23	10.5	14	15.75	28	35
3	2	2.5	3.5	7	8.75	3.25	4.5	6.5	13	16.25	7.5	10	11.25	20	25
4	1	1.5	2.5	3	3.75	2.25	3	4.5	6	7.5	6	8	10	12	15
5	.5	.75	1.5	2	2.5	1	1.5	2.25	3	3.75	3	4	5	6	7.5
6	.25	.5	1	1.5	2	.75	1	1.75	2.25	2.75	2.25	3	3.75	4.5	5.75
	Category I = 1 nonhistorical prior OR 2 nd offense not committed on same occasion					Category II = 1 historical prior felony OR 2+ nonhistorical priors, OR 3 rd or later offense not committed on same occasion					Category III = 2+ historical priors				

* Statutory aggravator to go above presumptive, 2+ aggravating factors to go over max. A.R.S. §13-702

DANGEROUS OFFENSES (§13-704)									
"Dangerous" = involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury ARS § 13-105(13).									
Class	First Offense §13-704(A)			One Historical Prior §13-704(B), (D)			Two Historical Priors §13-704(C), (E)		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
2	7	10.5	21	14	15.75	28	21	28	35
3	5	7.5	15	10	11.25	20	15	20	25
4	4	6	8	8	10	12	12	14	16
5	2	3	4	4	5	6	6	7	8
6	1.5	2.25	3	3	3.75	4.5	4.5	5.25	6

* 2F & 3F, prior must be 1F, 2F, or 3F, otherwise sentence as nondangerous repetitive

DANGEROUS OFFENSES – MULTIPLE OFFENSES (§13-704(F))						
Class	Second Dangerous Offense			Third + Dangerous Offenses		
	MIN	MAX	INCREASED MAX	MIN	MAX	INCREASED MAX
2	10.5	21	26.25	15.75	28	35
3	7.5	15	18.75	11.25	20	25
4	6	8	10	10	12	15
5	3	4	5	5	6	7.5
6	2.25	3	3.75	3.75	4.5	5.6

Δ may earn release credits of 1 day for every 6 served, unless prohibited by statute. Commutation is possible. A.R.S. §41-1604.07

DANGEROUS CRIMES AGAINST CHILDREN SENTENCING RANGES §13-705

corresponding to subsections of §13-705

Category	First			One Predicate Prior			Two Predicate Priors		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
A		LIFE			LIFE			LIFE	
B	LIFE/13	LIFE/20	LIFE/27	LIFE/13	LIFE/20	LIFE/27	LIFE/13	LIFE/20	LIFE/27
C	13	20	27	23	30	37		LIFE	
D	10	17	24	21	28	35		LIFE	
E	5	10	15	8	15	22		N/A	
F	2.5	5	7.5	8	15	22		N/A	
J	5	10	15	5	10	15	5	10	15

 Probation eligible

- A. 12yo and under, sexual assault OR sexual conduct with a minor**
 → LIFE (SHALL) (Only applies to Δ over 18yo) (does not apply to masturbatory conduct)
- B. < 12yo, attempt 1° murder, 2° murder, sexual assault OR sexual conduct with a minor, manufacture meth / danger to child**
 → LIFE or 13-27yrs
 → 100% time
- C. < 15yo, attempt 1° murder, 2° murder, sexual assault, sexual conduct with a minor, continuous sexual abuse of a child, taking a child for the purpose of prostitution, child prostitution, sex trafficking of a minor, manufacture meth / danger to child OR involving minors in drug offenses**
 → 13-27yrs
 → 100% time, 23-37 if predicate felony, life if 2 predicate
- D. <15yo, aggravated assault, unlawful mutilation, molestation of a child, child abuse, kidnapping, sexual exploitation of a minor, commercial sexual exploitation of a minor, OR aggravated luring a minor for sexual exploitation**
 → 10-24yrs
 → 100% time, 21-35 if predicate felony
- E. <15yo, luring a minor for sexual exploitation OR unlawful age misrepresentation**
 → 5-15 yrs
 → 85% time, 8-22 if predicate felony, life if 2 predicate
- F. <15yo, sexual abuse OR bestiality**
 → 2.5-7.5yrs
 → PROBATION ELIGIBLE, 85% time, 8-22 if predicate felony
- J. <15yo, DCAC 2° - Attempt for B, C or D – class 3 felony – 5-15yrs**
 → PROBATION ELIGIBLE, 85% time, no probation if predicate felony

No DCAC provision for attempt in E or F

The sentence imposed on a person by the court for a dangerous crime against children under subsection D of this section involving child molestation or sexual abuse pursuant to subsection F of this section may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time, including child molestation and sexual abuse of the same victim. A.R.S. §13-705(M).

“Predicate felony” means any felony involving

- child abuse pursuant to § 13-3623(A)(1),
- a sexual offense,
- conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument,
- OR a dangerous crime against children in the first or second degree.

SEXUAL ASSAULT §13-1406

First Offense			One Historical Prior			Two Historical Priors		
MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
5.25	7	14	7	10.5	21	14	15.75	28

Consecutive to any other sexual assault sentence imposed at any time, 100% time

SERIOUS, VIOLENT OR AGGRAVATED OFFENSES §13-706

"Serious offense" : (a) 1° murder, (b) 2° murder, (c) Manslaughter, (d) Aggravated assault resulting in serious physical injury or deadly weapon or dangerous instrument, (e) Sexual assault, (f) Any dangerous crime against children, (g) Arson of an occupied structure, (h) Armed robbery, (i) Burglary 1°, (j) Kidnapping, (k) Sexual conduct <15yo, (l) Child Prostitution.

- Δ convicted of committing or attempting Serious Offense, with 2+ prior convictions for Serious Offenses, not committed on the same occasion – shall be sentenced to **LIFE**, 100%, parole eligible 25 years
- Excludes drug offense, first degree murder or dangerous crimes against children in §13-705

"Violent or aggravated felony": (a) 1° murder, (b) 2° murder, (c) Aggravated assault resulting in serious physical injury or deadly weapon or dangerous instrument, (d) Dangerous or deadly assault by prisoner, (e) assault with intent to incite or participate in riot, (f) Drive by shooting, (g) Discharging a firearm at a residential structure if the structure is occupied, (h) Kidnapping, (i) Sexual conduct with a minor if C2F, (j) Sexual assault, (k) Molestation of a child, (l) Continuous sexual abuse of a child, (m) Violent sexual assault, (n) Burglary 1° in occupied residential structure, (o) Arson of an occupied structure, (p) Arson of an occupied jail or prison facility, (q) Armed robbery, (r) criminal syndicate or criminal street gang, (s) Terrorism, (t) Taking a child for the purpose of prostitution, (u) Child prostitution, (v) Commercial sexual exploitation of a minor, (w) Sexual exploitation of a minor, (x) Unlawful introduction of disease or parasite as prescribed by §13-2912, (A)(2) or (3).

- Unless a longer term of imprisonment or death is the prescribed penalty,
- a Δ convicted of committing or attempting or conspiring to commit any violent or aggravated felony & who has 2+ prior convictions for violent or agg felonies not committed or convicted on same occasion SHALL be sentenced to imprisonment for **LIFE**, 100%, parole eligible 35 years

OFFENSES COMMITTED WHILE RELEASED FROM CONFINEMENT §13-708

PRE-CONVICTION RELEASE (BAIL, O/R, ESCAPE)	POST CONVICTION RELEASE (PROBATION, PAROLE, ESCAPE FROM PRIOR OFFENSE)	
§13-708(D): Commission of any felony while released on bond or O/R on a separate felony or while the person is escaped from pre-conviction custody <ul style="list-style-type: none"> • + 2 YEARS PRISON 	§13-708(A) & (C): Commission while on probation, parole, furlough, community supervision, or escape for felony conviction <ul style="list-style-type: none"> • PRESUMPTIVE SENTENCE = MINIMUM • IF DANGEROUS – 100% TIME 	§13-708(B): Commission of dangerous offense while on release or escape from conviction for serious offense, serious physical injury or weapon offense. <ul style="list-style-type: none"> • SHALL BE SENTENCED TO MAXIMUM AUTH., INCREASE IF 2 AGG., & 100% TIME

Sentence for (A), (B), or (C) shall be consecutive to any other sentence from which the convicted person had been temporarily released or had escaped. This is in addition to enhanced punishment applicable under §13-703, §13-704, §13-709.01(A) or §13-709.02(C).

DRUG OFFENSE SENTENCING RANGES

Drug Threshold Amounts (§13-3401)

Drug	Threshold Amount
Amphetamine & Methamphetamine	9 grams (including in liquid suspension)
Cocaine	9 grams (powder form) — 750 milligrams (rock form)
Heroin	1 gram
LSD	1/2 milliliter (liquid form) — 50 dosage units (blotter form)
Marijuana	2 pounds
PCP	4 grams or 50 milliliters

For any combination consisting solely of drugs listed above, the threshold is an amount determined by A.R.S. §13-3420.

For any drug not listed above, or any combination of drugs not listed above, the threshold is an amount with a value of at least \$1,000.

METHAMPHETAMINE SALES §13-3407(E) – 100% time, “calendar years”						
Class	First Offense			Second and Subsequent Offenses		
2	Min	P	MAX	Min	P	MAX
	5	10	15	10	15	20

DRUG OFFENSES—MULTIPLE OFFENSES (§13-3419) Below Statutory Threshold Amounts (§13-3419(A)(1),(2))						
Class	Second Offense			Third and Subsequent Offenses		
2	Min	P	MAX	Min	P	MAX
	(3)* 4	5	10 (12.5)†	(3)* 4	5	10 (12.5)†
3	(1.875)* 2.5	3.5	7 (8.75)†	(1.875)* 2.5	3.5	7 (8.75)†
4	(1.125)* 1.5	2.5	3 (3.75)†	(1.125)* 1.5	2.5	3 (3.75)†
5	(.5)* .75	1.5	2 (2.5)†	(.5)* .75	1.5	2 (2.5)†

DRUG OFFENSES—MULTIPLE OFFENSES (§13-3419) Above Statutory Threshold Amounts (§13-3419(A)(3),(4))						
Class	Second Offense			Third and Subsequent Offenses		
2	Min	P	Max	Min	P	Max
	(3)* 4	5	10 (12.5)†	4	7	12 (15)†
3	(1.875)* 2.5	3.5	7 (8.75)†	2.5	5	9 (11.25)†
4	(1.125)* 1.5	2.5	3y (3.75)†	1.5	3	5 (6.25)†
5	(.5)* .75	1.5	2y (2.5)†	0.75	2.5	4 (5)†

For non-multiple drug offense sentencing ranges, refer to the general crimes sentencing ranges.

† Approximate 25% increase: A.R.S. §13-3419 (B).

* Approximate 25% reduction: A.R.S. §13-3419 (C).

PERSONAL POSSESSION & USE OF DRUGS—§13-901.01

A person convicted of a first or second offense for the personal possession or use of a controlled substance must be placed on probation. Incarceration may not be imposed as an initial condition of probation for a first offense, but may under reinstatement. Treatment is req. condition of probation.

Not protected if conviction for violent offense defined in §13-901.03, meth conviction, 3rd conviction, rejected probation, refused drug treatment condition.

FIRST AND SECOND DEGREE MURDER

1st Deg. Murder

Sentence of death or imprisonment for life or natural life, §§ 13-751, 13-752.

- ➔ If Δ >18 AND premeditated or officer (§13-1105(A)(1)&(3)) → NATURAL LIFE
- ➔ If Δ <18yo, or convicted felony murder (13-1105(A)(2)) → LIFE OR NATURAL LIFE

Natural life = not eligible for commutation, parole, work furlough, work release, or release from confinement on any basis.

Life = parole eligible in 25 calendar years, or 35 calendar years if victim <15yo.

2nd Deg. Murder

Calendar years, per § 13-710 – unless provided for in §§ 13-706(A), 13-705, 13-704(A).

First Offense			Second and Subsequent Offenses Prior = 2 nd deg murder or c2 or c3 dang		
Min	P	MAX	Min	P	MAX
10	16	25	15	20	29

85% vs MANDATORY FLAT TIME SENTENCES

A person may earn release credits of one day for every six days served, unless prohibited by statute. Commutation is possible, unless otherwise provided by law. A.R.S. § 41-1604.07.

MANDATORY FLAT TIME CRIMES

1. DCAC 1st deg § 13-705 (except E/F)
2. Dangerous Offense / On Release § 13-708 (A&B)
3. Meth Sales § 13-3407
4. Involving Minor in Drug Offense § 13-3409
5. Serious Drug Offense § 13-3410
6. Serious/ Violent/ Aggravated Felony § 13-706
7. Violent Crime committed under infl. Mj, narc, dang drug §§ 41-1604.15, 13-901.03
8. Dangerous / Deadly Assault by Prisoner § 13-1206
9. Prisoner Assault w/ Intent to Incite § 13-1207(B)

The court shall impose a term of community supervision equal to one day for every seven days of the sentence. A.R.S. § 13-603(I). This includes flat time sentences. This may be waived if there is a sentence of probation to begin upon release from DOC. § 13-603(K).

JUVENILE OFFENDERS — §13-501

SHALL charge as an adult if the juvenile is 15, 16, or 17 years of age and is accused of:

1. First degree murder in violation of § 13-1105.
2. Second degree murder in violation of § 13-1104.
3. Forcible sexual assault in violation of § 13-1406.
4. Armed robbery in violation of § 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection OR
8. if the juvenile has a historical prior felony conviction

MAY charge as an adult if the juvenile is at least 14 years of age and accused of:

1. A class 1 felony.
2. A class 2 felony.
3. A class 3 felony in violation of any offense in chapters 10 - 17 or 19 or 23 of this title.
4. A class 3, 4, 5 or 6 felony involving a dangerous offense.
5. Any felony offense committed by a chronic felony offender.
6. Any offense that is properly joined to an offense listed in this subsection.

On the motion of a juvenile or on the court's own motion, if a juvenile is being prosecuted under §13-501 (B), the court, shall hold a hearing to determine if jurisdiction of the criminal prosecution should be transferred § 13-504.

SPECIALIZED ENHANCEMENTS

- 13-1204(C) – Dangerous Aggravated Assault on Peace Officer (presumptive minimum, flat time)
- 13-709 – committed in school safety zone (+1 year)
- 13-3411 – drug offenses in school zone
- 13-714 – Criminal Street Gang (+3 or +5 years)
- 13-711 – While in DOC (consecutive)
- 41-1604.15 – violent offenses while under influence (flat time)

MISDEMEANOR PENALTIES §13-707, §13-802, §13-803

Class	Jail Max	Probation Max	Fines before surcharges
1	6 months	3 years	Up to \$2,500
2	4 months	2 years	Up to \$750
3	30 days	1 year	Up to \$500
Petty	No jail		Up to \$300

DUI §28-1381 or §28-1382: the term of probation is up to five years.

DV § 13-3601.01: must order DV treatment, if prior DV w/in 60 months, may order supervised probation/jail.

Repetitive § 13-707(B) if convicted of same offense w/in 2 years, sentenced for the next higher class of offense

CS FOR FINES §13-824 the court may order a defendant convicted of a misdemeanor to perform community restitution in lieu of payment of all or part of a fine, a fee, assessment or incarceration cost (but not a surcharge) if the court finds the defendant is unable to pay all or part. The amount of community restitution is credited at \$10 per hour.

ENHANCEMENT CHART

§13-701(D): Aggravating Factors

- Opens the aggravated sentencing range

§13-703: Historical Prior Felony Convictions

- §13-105(22) definition of prior
- 1 or more "prior" = No probation
- 1 "prior" = longer prison sentences
- 2 "prior" = even longer prison sentences

§13-703: Multiple offenses not committed on the same occasion (same trial, or nonhistorical)

- 2nd offense = No probation
- 3rd offense = No probation + enhanced sentence

§13-704: Dangerous Offenses

- 1st offense = No probation + longer prison
- 1 "dangerous prior" = No probation + even longer prison sentence
- 2 "dangerous prior" = No probation + longest prison sentence

§13-704(F): Multiple Dangerous offenses not committed on the same occasion

- 2nd offense = enhanced sentencing
- 3rd offense = greater enhanced sentencing

§13-705: Dangerous Crimes Ag. Children

- Enhanced sentences if child victim <15

§13-706(A): Serious Offense when previously convicted of 2 serious offenses

- life (25 years)

§13-707(B): Misdemeanors

- Makes a repetitive class 1 misdemeanor punishable as a felony

§13-708: Commission on Probation / Parole

- No probation + sentence not less than the presumptive
- If "dangerous" 100% time

§13-708(D): Felony Release

- additional 2 years prison.

§13-709: Committed in school zone

- Court may impose additional 1 year prison.

§13-714: Criminal Street Gang

- No probation + 3 extra years prison (4,5,6 felony)
- No probation + 5 extra years prison (2,3 felony)

§13-1406: Sexual assault w/drugs

- Additional 3 years prison

§13-1423: Violent sexual assault

- Natural life

§13-3407: Meth Enhancement

- No probation + enhanced sentencing

§13-901.01: Prop 200

- If no priors, then defendant shall be placed on probation (w/no jail)
- If 1 prior drug conviction, then shall be placed on probation (w/jail)
- If 2 prior drug convictions then defendant is out of prop 200
- If convicted of a violent crime then defendant is out of prop 200 (13-901.03)
- If meth or meth conviction, out of prop 200
- If refuse treatment or probation, out of prop 200

§13-3411: Drug offense committed in school zone

- No probation + extra 1 year prison

§13-3419: Multiple drug offenses not committed on the same occasion

- Under threshold amount
 - 3rd (or more) offense = No probation
- Above threshold amount
 - 2nd offense = No probation
 - 3rd (or more) offense = No probation + enhanced sentence

§13-3405(C), 13-3407(D), 13-3408(D): Above Threshold Amount

- No probation

§13-3410: Serious drug offender

- Life (25)

§13-118: Sexual Motivation

- judge may require sex off. reg. § 13-3821(c)

Crimes that mandate prison without enhancement

- 13-1104 – 2nd Degree Murder
- 13-1105 – 1st Degree Murder
- 13-1206 – Dangerous assault/prisoner
- 13-1207 – Assault/riot/prisoner
- 13-1406 – Sexual assault
- 13-1802(1)&(3) – Theft if over \$100,000
- 13-2308 – Criminal syndicate w/minor
- 13-2312 – Illegal enterprise w/minor
- 13-2310(C) – Fraudulent Schemes if over \$100,000
- 13-3407(E) + 13-3408(E) – Manufacturing

Rule 12.1. Selecting and Preparing Grand Jurors

(a) Summons. Grand jurors are summoned and impaneled as provided by law.

(b) Voir Dire. Each prospective grand juror must be examined under oath or affirmation to confirm that the prospective juror will act impartially and without prejudice, and that the prospective juror is qualified under [A.R.S. § 21-201](#). Inquiry also may be made about other relevant subjects.

(c) Oath. Each grand juror must take the following oath: "I swear (or affirm) that I will give careful attention to the proceedings, abide by the court's instructions, and decide matters placed before the grand jury in accordance with the law and evidence presented to me (so help me God)."

(d) Instructions. The court must inform the grand jurors of:

- (1) the duty to be present at each grand jury session;
- (2) the duty to inquire into every offense that is presented;
- (3) the duty of a grand juror to disqualify himself or herself in a particular matter for any of the reasons listed in [Rule 12.2](#);
- (4) the duty to return an indictment only if they are convinced there is probable cause to believe an offense has been committed and the person under investigation committed it;
- (5) the right to ask the State to present additional evidence; and
- (6) the confidentiality of grand jury matters and materials, and the penalties for unlawful disclosure.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.2. Grounds to Disqualify a Grand Juror

A grand juror is disqualified from serving in any particular matter if the juror is:

- (a)** a witness in the matter;
- (b)** interested directly or indirectly in the matter under investigation;
- (c)** related within the fourth degree by either consanguinity or affinity to a person under investigation, a victim, or a witness; or
- (d)** biased or prejudiced in favor of either the State or a person under investigation.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.3. Grand Jury Foreperson

(a) Appointment and Powers. The court must appoint a foreperson and an acting foreperson to serve in the foreperson's absence. The foreperson will preside over the grand jury's proceedings and act as the court's representative in maintaining order, administering oaths, excluding unauthorized persons and persons acting in an unauthorized manner, appointing officers within the grand jury as necessary for its orderly functioning, and performing other duties as may be imposed on the foreperson by law or by court order.

(b) Request for Contempt Proceeding. The foreperson may request the court to initiate a contempt proceeding against a person whose conduct violates these rules or disrupts grand jury proceedings.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.4. Who May Be Present During Grand Jury Sessions

(a) General. Only the following individuals may be present during grand jury sessions:

- (1) the witness under examination;
- (2) counsel for a witness if the witness is a person under investigation by the grand jury;
- (3) a law enforcement officer or detention officer accompanying an in-custody witness;
- (4) prosecutors authorized to present evidence to the grand jury;
- (5) a certified court reporter; and
- (6) an interpreter, if any.

(b) Deliberations. Only grand jurors may be present during their deliberation and voting.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.5. Appearance of a Person Under Investigation

(a) The Person. A person under investigation by the grand jury may be compelled to appear before the grand jury, or may be permitted to appear upon the person's written request. The person must be advised of the right to remain silent and the right to have counsel present to advise the person while giving testimony.

(b) Counsel. If counsel accompanies the person under investigation, counsel may not communicate, or attempt to communicate, with anyone other than the person. The foreperson may expel counsel from the grand jury session if counsel violates this rule.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.6. Indictment

(a) Number of Grand Jurors Necessary to Indict. An indictment requires the concurrence of at least 9 grand jurors, regardless of the number of grand jurors hearing a matter.

(b) Return of Indictment. The indictment must be returned by the foreperson in open court and in the presence of the grand jury and the prosecutor.

(c) Notice of Supervening Indictment. If the defendant previously has had an initial appearance under [Rule 4.2](#), the court must prepare and send to the defendant and defense counsel a notice of supervening indictment instead of issuing a warrant or summons.

(d) No Indictment Returned. If a person is in custody or has posted bond on a matter presented to the grand jury and no indictment is returned, the foreperson through the prosecutor must promptly inform the court in writing that the grand jury did not return an indictment.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.7. Record of Grand Jury Proceedings

(a) Court Reporter. The presiding or impaneling judge must assign a certified court reporter to record all grand jury proceedings, except its deliberations.

(b) Foreperson. The foreperson must keep a record of how many grand jurors voted for and against an indictment, but must not record how each grand juror voted. If the grand jury returns an indictment, the foreperson's record of the vote must be transcribed by the court reporter and filed with the court no later than 20 days after the return of the indictment, and may be made available only to the court, the State, and the defendant.

(c) Filing the Transcript and Minutes. The court reporter's record of grand jury proceedings must be transcribed and filed with the superior court clerk no later than 20 days after return of the indictment, and may be made available only to the court, the State, and the defendant.

Credits Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.8. Challenge to a Grand Jury or a Grand Juror

(a) Grounds for a Challenge.

(1) The grand jury may be challenged only on the ground that the grand jurors were not drawn or selected according to law.

(2) An individual grand juror may be challenged on the ground that the juror is not qualified to sit on the grand jury or on a particular matter.

(b) Method of Challenge.

(1) A challenge by the State to a grand jury or a grand juror must be directed to the presiding or impaneling judge.

(2) A defendant may challenge a grand jury or grand juror only after the indictment has been returned.

(3) Any challenge made after the grand jurors are sworn must be in writing.

(c) Effect of Sustaining a Challenge.

(1) If a challenge to the grand jury is sustained, the grand jury must be discharged.

(2) If a challenge to an individual juror is sustained, the juror must be discharged or excluded from deliberation on the particular matter that was the subject of the challenge.

Credits Added Aug. 31, 2017, effective Jan. 1, 2018.

Rule 12.9. Challenge to Grand Jury Proceedings

Currentness

(a) Grounds. A defendant may challenge a grand jury proceeding only by filing a motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right or that an insufficient number of qualified grand jurors concurred in the indictment.

(b) Timing. A defendant must file a motion under (a) no later than 45 days after the certified transcript and minutes of the grand jury proceedings are filed or no later than 45 days after the defendant's arraignment, whichever is later.

(c) Relief. If the court grants a motion for a new finding of probable cause, the State may proceed with the prosecution of the case by filing a complaint under Rule 2 or by resubmitting the matter to the same or another grand jury. On motion or on its own, the court must dismiss the case without prejudice unless a complaint is filed, or a grand jury's consideration begins, no later than 15 days after entry of the order granting the motion for a new finding of probable cause.

Credits Added Aug. 31, 2017, effective Jan. 1, 2018.